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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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FINAL NOTICES

The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its January 8, 2013 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at www.sdcounty.ca.gov/clerb.

CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (8)

ALLEGATIONS, FINDINGS & RATIONALE

10-114

1. Death Investigation/Homicide – Deputy 1 found inmate Jeffrey Dunn unresponsive after being alerted by several inmates that Dunn had suffered an asthmatic attack. It was later determined that he died from sudden arrest during a physical altercation with another inmate.

Board Finding: Action Justified

Rationale: Deputy 1 and detentions staff were not found to have committed any alleged improper or illegal acts, omissions or decisions which contributed to the death of the decedent. Upon notification of Inmate Dunn's distressed condition, detentions staff responded quickly to secure the unit and allow medical staff to begin resuscitative efforts. There was no evidence to support an allegation of misconduct or negligence on the part of Sheriff's Department personnel. The actions of deputies were lawful, justified and proper.

11-140

1. Misconduct/Procedure – Deputy 1 failed to take a written report of a crime reported by the complainant.

Board Finding: Action Justified

Rationale: Deputy 1 responded to a civil issue between the complainant and his landlord. He contacted the complainant, advised him of his options, but during this contact was not apprised, nor was he aware of the commission of any crimes. As such, Deputy 1 was not required to take a written report. Deputy 1's actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to take a written report of a crime reported by the complainant.

Board Finding: Sustained

Rationale: Deputy 2 responded to a call for service where it was reported and later confirmed that the complainant's landlord had changed the door locks; locking him out of his residence. This Tenant Lockout procedure is viewed by the law as a "use of force" and is therefore a misdemeanor prohibited by Penal Code § 418, Forcible Entry. Pursuant to 6.71 – Crime Case Reports - of the Department's Policies and Procedures Manual, the completion of an ARJIS 2 Crime/Incident Report form is required for all reported misdemeanor crimes. The evidence supports the allegation and the act was not justified.

3. Misconduct/Procedure – Deputy 3 failed to take a written report of a crime reported by the complainant.

Board Finding: Sustained

Rationale: Deputy 3 responded to a Penal Code § 602, Trespass, call in which the complainant was observed entering a business through a window. The complainant was contacted on scene and informed Deputy 3 that he had resided in the subject building for a year and had personal possessions in the building. He also informed Deputy 3 that his landlord had changed the door locks, denying him entry into his residence. Deputy 3 confirmed that the complainant resided at the location and had personal property there, but did not recall being informed by the complainant that his landlord had locked him out of his residence. This Tenant Lockout procedure is viewed by the law as a "use of force" and is therefore a misdemeanor prohibited by Penal Code § 418, Forcible Entry. Pursuant to Department Policy and Procedure 6.71, Crime Case Reports, the completion of an ARJIS 2 Crime/Incident Report form is required for all reported misdemeanor crimes. The evidence supports the allegation and the act was not justified.

4. Misconduct/Procedure – Deputy 4 failed to take a written report of a crime reported by the complainant.

Board Finding: Sustained

Rationale: Deputy 4 responded to a landlord/tenant dispute in which the landlord was reported to have kicked in the complainant's door. Deputy 4 observed the damaged door and was informed by the complainant that his landlord had illegally entered his living area. The landlord was contacted on scene and admitted to kicking in the complainant's door. Deputy 4 reported that he did not take a written report because neither party desired prosecution. Per Penal Code § 418, Forcible Entry, every person using any force or violence in entering upon or detaining any lands or other possessions of another, is guilty of a misdemeanor. Deputy 4 failed to document the misdemeanor forcible entry as required by Department Policy and Procedure 6.71, Crime Case Reports. The evidence supports the allegation and the act was not justified.

11-142

1. Criminal Conduct – Deputy 1 took the complainant's personal property, a backpack and its contents, and failed to return them.

Board Finding: Not Sustained

Rationale: Deputy 1 reported that after searching the complainant's backpack, he placed it on the front, passenger seat of his patrol unit before transporting the complainant to another location. Deputies 2 and 3 assisted on scene and both reported having seen Deputy 1 place the complainant's backpack in his patrol vehicle before the complainant was transported. Deputy 1 stated that he transported the complainant to another trolley station, gave him all of his personal property and released him. The complainant woke the following morning in an unfamiliar vehicle unable to locate his backpack. There was insufficient evidence to either prove

or disprove the allegation.

2. Misconduct/Procedure – Deputy 1 failed to follow procedure with the intoxicated complainant.

Board Finding: Sustained

Rationale: Deputy 1 and Deputy 3 responded to a 647(f) (intoxicated subject) call broadcast by Sheriff's Dispatch. Both reported that the complainant was intoxicated at the time of their contact with him, with Deputy 1 stating in his SERF that the complainant was "very intoxicated that night." Deputy 2 also assisted on scene and reported the complainant to be "extremely intoxicated" at the time of this contact. The complainant himself described his condition as "blacked out drunk" with only vague recollections of that night's events. Pursuant to Penal Code Section 647(g), when a person is found in this condition, in violation of subdivision (f), "a peace officer, if reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody." Sheriff's Patrol Manual Policy 42, Inebriate Reception Center (Per Penal Code 647(f) directs that such person shall be taken to the Inebriate Reception Center (IRC) for evaluation and admission if the subject meets the entry criteria and the Deputy feels that jail is not the best option. After contacting the complainant, Deputy 1 transported him to another location and left him there, in clear violation of this code. Deputy 1 stated that he did not place the complainant in civil protective custody because, although intoxicated, he did not feel that the complainant was unable to care for his own safety. This despite his, Deputy 2's and Deputy 3's respective assessments that the complainant was "very intoxicated," "extremely intoxicated" and "intoxicated" on the night in question. The complainant awakened the next day in a stranger's locked van with absolutely no knowledge of how he got there; providing final demonstration of his inability to exercise care for his own safety. The evidence supports the allegation and the act was not justified.

12-023

1. Excessive Force – Deputy 3 tackled the complainant causing injury.

Board Finding: Action Justified

Rationale: The complainant had been disruptive in a holding cell and was being moved to the Receiving Area bench when she pulled away from Deputies 1 and 3, and grabbed the window bars of the control area. The complainant did not obey verbal orders to release the window bars and continued to resist which resulted in Deputy 3 forcibly pulling her to the ground with the assistance of Deputies 1 and 2. Deputies 1, 2, and 3 used department approved hand and bodyweight techniques to regain control of the complainant, handcuff her, and position her on the bench in the Control area. The complainant experienced minor injuries which were evaluated and treated by medical staff. The force used was necessary and reasonable to overcome the complainant's resistance, and was in compliance with Department Policy and Procedure I.89, Use of Force, and Addendum F, Use of Force Guidelines. The alleged act did occur but was lawful, justified, and proper.

2. Excessive Force – Deputy 3 placed the complainant in a chokehold causing injury.

Board Finding: Action Justified

Rationale: The complainant resisted Deputy 3's verbal and physical efforts to release her hold on the window bars of the D2 Control area window. Deputy 3 denied using any type of chokehold. Deputy 3 used his right arm to encircle the front of her neck and attempted to cause her to release her hold on the window bars without success. He repositioned himself to gain better control and was able to pull the complainant backward and forcibly guide her to the floor. The complainant experienced minor injuries which were evaluated and treated by medical staff prior to her release. The force used was necessary and reasonable to overcome the complainant's resistance, and was in compliance with Department Policy and Procedure I.89, Use of Force, and Addendum F, Use of Force Guidelines. The alleged act did occur but was lawful, justified, and proper.

12-024

1. Misconduct/Procedure – Deputies 1 and 2 failed to write a report at the scene of an incident which resulted in the denial of insurance claim.

Board Finding: Action Justified

Rationale: Deputies 1 and 2 responded to a reported malicious vandalism call, and after arriving on scene Deputy 1 determined the incident to be a non-injury bicycle/vehicle collision. San Diego Sheriff's Department Policy and Procedures 6.71, Crime Case Reports, does not require reports for non-injury collisions. Deputy 1 facilitated the information exchange and both parties were provided the Incident Number, and the other party's name, California Driver's License Number, and Insurance Company. There was no violation of orders or policy of the San Diego County Sheriff's Department. The alleged act did occur but was lawful, justified and proper.

2. False Reporting – Deputy 1 provided limited and/or erroneous information to the complainant concerning the suspect's insurance carrier and/or contact information.

Board Finding: Action Justified

Rationale: Deputy 1 facilitated the information exchange by providing the name, California Driver's License Number, and name of insurance company to each of the parties involved. Exchange of information, per California Vehicle Code 16025, Mandatory Exchange of Information, is the responsibility of every driver involved in the accident unless rendered incapable. The complainant did not attempt to obtain information from the bicyclists, opting to await Deputy 1's arrival. Deputy 1 provided each party with necessary information to support insurance claims; the act did occur but was lawful, justified and proper.

12-030

1. Illegal Search or Seizure – Deputy 4 searched co-complainant Kenniston's cell without videotaping the search and/or having the complainant present on April 1, 2012.

Board Finding: Sustained

Rationale: Deputy 4 conducted a scheduled Hygiene Inspection to ensure cleanliness standards compliance and to evaluate adherence to rules and regulations regarding inmate property. Upon returning to his cell Kenniston noticed his privileged communications had been opened and moved from their boxes. San Diego Central Jail Directive #10, Pro Per Inmate Cell Searches, did not require videotaping of routine Hygiene Inspections provided the inspection is a visual inspection where no physical inspection or search takes place; however, any activity beyond a visual inspection requires the same procedures delineated for Cell Searches. Department Policy I.41, Inmate Cell Searches, states that privileged communications may not be scanned or read, and that privileged communications may be examined for contraband only and while in the presence of the inmate. Deputy 4 denied that the inspection activity elevated to the level of a cell search; however, video evidence showed that the inspection took much longer than other cell inspections, and Deputy 4 removed bed linens and searched under mattresses, activities more properly conducted during a cell search. The evidence supports the allegation and the conduct was not justified.

2. Illegal Search or Seizure – The Sheriff's Department searched co-complainant Kenniston's cell without videotaping the search and/or having the complainant present on April 12, 2012.

Board Finding: Sustained

Rationale: The Sheriff's Department authorized Deputies 1, 2, and 3 to conduct a cell search, for the purpose of locating contraband, without co-complainant Kenniston being present. During the search Kenniston's privileged communications were examined for contraband. The search was videotaped; however, the inmate was not present as required by Department Procedure I.41, Cell Searches. The evidence supports the allegation and the conduct was not justified.

3. Illegal Search or Seizure – The Sheriff's Department searched co-complainant Cruz's cell without video-taping the search and/or having the complainant present on May 12, 2012.

Board Finding: Not Sustained

Rationale: The Sheriff's Department authorized Deputies 5, 6, 7, and 8 to conduct unscheduled cell search without co-complainant Cruz being present. Department Policy I.41, Inmate Cell Searches, states that privileged communications may not be scanned or read, and that privileged communications may be examined for contraband only and while in the presence of the inmate. Video evidence showed deputies gathered the inmate's possessions and passed them through an X-ray machine in search of contraband. The camera angle did not show whether or not deputies inside the cell scanned or examined privileged communications prior to passing the privileged communications through the X-ray machine. Those deputies that were in camera view did not open, scan, or examine any of the co-complainant's privileged communications. The video did not provide sufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputies 5, 6, 7, 8 and/or 9 disposed of items the co-complainant Cruz was authorized to have in his cell.

Board Finding: Not Sustained

Rationale: Deputies 5, 6, 7, 8, and 9 denied disposing of any authorized items. Co-complainant Cruz reported that deputies disposed of a deck of cards (except for the box and one Joker), one unopened bag of Lays Potato Chips, one unopened bag of Cheetos, one unopened bag of Jolly Ranchers, and one Snickers bar. Video evidence documented the search but there is no evidence to show that Deputies 5, 6, 7, 8, or 9 disposed of the complainant's commissary items. There was insufficient evidence to either prove or disprove the allegation.

POLICY RECOMMENDATION:

Cell Inspections and Searches:

San Diego Sheriff's Department issue a Training Bulletin to all Detentions sworn personnel and direct that cell inspections and searches shall be conducted consistent with an inmate's right to maintain privileged communications.

12-033

1. Misconduct/Intimidation – Deputy 1 threatened the complainant with physical harm.

Board Finding: Not Sustained

Rationale: The complainant felt physically threatened when Deputy 1 allegedly said he was going to impound her car and make her walk home. The complainant recently had undergone surgery, walked with the assistance of a cane, and was afraid that she may have to walk approximately four miles to reach home. Deputy 1 said he advised the complainant that the vehicle could be towed per California Vehicle Code (CVC) § 22651 and Department Policy 6.37, Towing Policy, because her vehicle registration was expired in excess of six months. The vehicle was not towed. Deputy 2 was present throughout the contact and did not hear Deputy 1 threaten the complainant with physical harm. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy- Deputy 1 accused the complainant of lying about her California driver's license.

Board Finding: Not Sustained

Rationale: Deputy 1 denied he accused the complainant of lying about her California Drivers License. The complainant had properly reported her change of address to the Department of Motor Vehicles (DMV) 14 months prior to the traffic stop but had not been annotated the back of her license as Board by the DMV. When the complainant was asked if the address on her California Drivers License was current she responded in the negative. There were no witnesses to this alleged statement, nor were there video/audio recordings that demonstrated Deputy 1 accused the complainant of lying. Deputy 2 was present throughout the contact and did not hear Deputy 1 accuse the complainant of lying about her California driver's license. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Discourtesy- Deputy 1 accused the complainant of lying about her vehicle registration.

Board Finding: Not Sustained

Rationale: Deputy 1 denied that he accused the complainant of lying about her vehicle registration. The complainant presented an expired 2009 registration with copies of cancelled checks made out to the DMV which the complainant believed had updated her vehicle registration. Deputy 1 advised her that a DMV records check indicated the vehicle registration was expired. DMV recorded payments for the complainant's vehicle registration on April 18 and 19, 2011, and certification of a smog test on April 19, 2011. Per DMV records the vehicle registration was expired until April 19, 2011, three days after the traffic stop. There were no witnesses to this alleged statement, nor were there video/audio recordings that demonstrated Deputy 1 accused the complainant of lying. Deputy 2 was present throughout the contact and did not hear Deputy 1 accuse the complainant of lying about her vehicle registration. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – Deputy 1 threatened to impound the complainant's vehicle.

Board Finding: Action Justified

Rationale: Deputy 1 denied that he threatened the complainant. The complainant presented an expired 2009 registration with copies of cancelled checks made out to the Department of Motor Vehicles (DMV) which she believed had updated her vehicle registration. Deputy 1 advised her that DMV records revealed the vehicle registration was expired. The complainant's registration had expired in excess of six months before the date of discovery and therefore the vehicle could be towed or impounded per California Vehicle Code 22651(o)(1)(a), Circumstances Permitting Removal of Vehicle. Deputy 1 opted not to impound the vehicle because of the complainant's disability. Deputy 2 was present throughout the contact and did hear Deputy 1 advise the complainant that her vehicle could be towed per CVC 22651(o)(1)(a). The evidence showed Deputy 1 did advise the complainant that her vehicle could be towed, and the conduct was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 required the complainant to appear in court for a violation that could have been resolved with a fix-it ticket.

Board Finding: Action Justified

Rationale: Deputy 1 cited the complainant for an expired registration and issued a notice to appear rather than a correctible condition in accordance with California Vehicle Code § 40610, Notice to Correct Violation. Deputy 1 marked the "No" box for the Correctible Violation on the Notice to Appear because the complainant's registration had been expired for so long and she neglected to resolve discrepancies with the DMV. The evidence showed that the alleged act did occur but was lawful, justified and proper.

6. Misconduct/Intimidation – Deputy 1 told the complainant that he was going to watch for her vehicle and pull over the vehicle anytime he saw her.

Board Finding: Not Sustained

Rationale: Deputy 1 denied that he told the complainant he would watch for her vehicle and pull her over anytime he saw her. Deputy 1 did advise the complainant that her vehicle may be towed if she is stopped again for the expired registration. There were no video or audio recordings which captured this statement. Deputy 2 was present throughout the contact and did not hear Deputy 1 make any statement that he would be watching for her vehicle. There was insufficient evidence to either prove or disprove the allegation.

12-131

1. Excessive Force – Deputy 1 violently pulled the complainant's cuffed arm through the tray slot of his cell door.

Board Finding: Unfounded

Rationale: Deputy 1 reported that she was removing the complainant's wrist cuff, when he grabbed her wrist and attempted to pull her arm through the cell door food flap and into his cell. Video footage of this incident appeared to corroborate Deputy 1's report, as it showed her body forcefully moving forward, not backwards,

indicating that she was the party being pulled and not the complainant. Injuries sustained by the deputy further corroborate her account of this incident. The evidence shows that the alleged act did not occur.

2. Excessive Force – Deputy 1 forcefully pulled the complainant’s cuffed arm through the tray slot of his cell door to remove a handcuff.

Board Finding: Action Justified

Rationale: Deputy 1 was removing the complainant’s handcuffs when the complainant pulled his cuffed right hand, and the waist chains to which they were attached, through the cell door food flap and into his cell. Immediately, he agreed to place his cuffed hand back through the food flap so that Deputy 1 could continue to uncuff him. Video footage of the incident showed Deputy 1 firmly holding the retrieved waist chain as she uncuffed the complainant and released his hand. The video footage showed that, pursuant to the Sheriff’s Detention Policy I.89, Use of Force, Deputy 1 did not use more force than was reasonably necessary to control the complainant’s arm and release his cuffed hand. The evidence shows the alleged act did occur, but was lawful, justified and proper.
